

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 2

PRESCHOOL OF AMERICA, X

Petitioner,

against

DISTRICT COUNCIL 1707,
AFSCME, AFL-CIO,

Respondent.

Case Nos.: 2-CA-39988,
2-CA-40056 and
2-CA-40107

ANSWER

NEW YORK, NY

REC'D
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APR 10
2011

Petitioner **PRESCHOOL OF AMERICA, INC.** (charged herein incorrectly as PRESCHOOL OF AMERICA) by its attorney, **MARC S. BRESKY, ESQ.**, as and for its Answer, respectfully sets forth and alleges upon information and belief as follows:

1. Admits the allegations contained in paragraph 1 of the Consolidated Complaint.
2. Admits the allegations contained in paragraph 2 of the Consolidated Complaint.
3. Admits the allegations contained in paragraph 3 of the Consolidated Complaint.
4. Admits the allegations contained in paragraph 4 of the Consolidated Complaint.
5. Admits the allegations contained in paragraph 5 of the Consolidated Complaint.

6. Admits the allegations contained in paragraph 6 of the Consolidated Complaint.

7. Denies each and every allegation contained in paragraph 7 of the Consolidated Complaint in its entirety.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Consolidated Complaint.

9. Admits the allegations contained in paragraph 9 of the Consolidated Complaint.

10. Denies each and every allegation contained in paragraph 10 of the Consolidated Complaint in its entirety.

11. Denies each and every allegation contained in paragraph 11 of the Consolidated Complaint including subparagraphs (a) through and including (z) and (aa) contained therein.

12. Denies each and every allegation contained in paragraph 12 of the Consolidated Complaint including subparagraphs (a) and (b) contained therein.

13. Denies each and every allegation contained in paragraph 13 of the Consolidated Complaint including subparagraphs (a) through and including (i) contained therein.

14. Denies each and every allegation contained in paragraph 14 of the Consolidated Complaint including subparagraphs (a) through (c) contained therein.

15. Denies each and every allegation contained in paragraph 15 of the Consolidated Complaint in its entirety.

16. Denies each and every allegation contained in paragraph 16 of the Consolidated Complaint including subparagraphs (a) and (b) contained therein.

17. Denies each and every allegation contained in paragraph 17 of the Consolidated Complaint including subparagraphs (a) through and including (h) contained therein.

18. Denies each and every allegation contained in paragraph 18 of the Consolidated Complaint including subparagraphs (a) and (b) contained therein.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19(a) of the Consolidated Complaint except refers a certain Employee Warning Notice to the administrative law judge, National Labor Relations Board and/or other court or tribunal having jurisdiction thereof for the terms and legal import thereof and denies each and every allegation contained in paragraph 19(b) of the Consolidated Complaint.

20. Denies each and every allegation contained in paragraphs 20(a) and 20(c) of the Consolidated Complaint and admits the allegations contained in paragraphs 20 (b) contained therein.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21(a) of the Consolidated Complaint and denies each and every allegation contained in paragraph 21(b) of the Consolidated Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22(a) of the Consolidated

Complaint and denies each and every allegation contained in paragraph 22(b) of the Consolidated Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23(a) and 23(b) of the Consolidated Complaint except respectfully refers all questions of law to the administrative law judge, National Labor Relations Board and/or other court or tribunal having jurisdiction thereof, and denies each and every allegation contained in paragraph 23 (c) of the Consolidated Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24(a) and 24(b) of the Consolidated Complaint except respectfully refers all questions of law to the administrative law judge, National Labor Relations Board and/or other court or tribunal having jurisdiction thereof, and denies each and every allegation contained in paragraph 24 (c) of the Consolidated Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25(a) and 25(b) of the Consolidated Complaint except respectfully refers all questions of law to the administrative law judge, National Labor Relations Board and/or other court or tribunal having jurisdiction thereof, and denies each and every allegation contained in paragraph 25 (c) of the Consolidated Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26(a) and 26(b) of the Consolidated Complaint except respectfully refers all questions of law to the

administrative law judge, National Labor Relations Board and/or other court or tribunal having jurisdiction thereof, and denies each and every allegation contained in paragraph 24 (c) as they relate to Paragraph 24 (a) (1), (2), (4), (5), (6) and (7) of the Consolidated Complaint.

27. Denies each and every allegation contained in paragraph 27 of the Consolidated Complaint in its entirety.

28. Denies each and every allegation contained in paragraph 28 of the Consolidated Complaint in its entirety.

29. Denies each and every allegation contained in paragraph 29 of the Consolidated Complaint in its entirety.

30. Denies each and every allegation contained in paragraph 30 of the Consolidated Complaint in its entirety.

31. Denies each and every allegation contained in paragraph 31 of the Consolidated Complaint in its entirety.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

32. Respondent has not engaged in any conduct so serious or substantial in character so as to render the possibility of erasing the effects thereof and of conducting fair elections in any and all units by use of traditional remedies in such units slight.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

33. Respondent has not engaged in any activity which has substantially impacted employee free choice of their bargaining representative Plaintiff's second cause of action fails to set forth a claim upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

34. Respondent has remained ready and willing to bargain in good faith with the Union with respect to the assistant teacher's unit, for the period required by Mar-Jac Poultry, and the Union has failed to do so.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands and bad faith.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

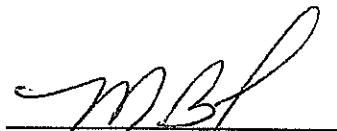
AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

37. Head teachers are not employees as defined in the Act. Rather, they are supervisors as defined by Section 2(11) of the Act and a labor organization cannot represent them for the purposes of collective bargaining.

WHEREFORE, respondent Preschool of America demands judgment dismissing all of the charges in the Consolidated Complaint, together with attorney's fees, costs, interest, and disbursements in this action.

Dated: Queens, New York
 February 7, 2011

Yours, etc.



MARC S. BRESKY, ESQ.
Attorney for Respondent,
Preschool of America
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Suite 520
Elmhurst, New York 11373
(718) 335-5400

TO: District Council 1707, AFSCME
Att: Julian De Jesus
101 Avenue of the Americas
New York, New York 10013

Harvey S. Mars, Esq.
Law Office of Harvey S. Mars LLC
322 West 48th Street
New York, New York 10036

Community and Social Agency Employees' Union, District Council 1707
Att: Mike Green
Director of Organizing
101 Avenue of the Americas
New York, New York 10013

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AFFIDAVIT
OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

MARC S. BRESKY, being duly sworn, deposes and says: I am not a party to this action and am over 18 years of age and reside in Nassau County. On the 9th day of February, 2011, I served the within ANSWER upon the following by depositing a true copy of the same enclosed in a postpaid properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

District Council 1707, AFSCME
Attn: Julian De Jesus
101 Avenue of the Americas
New York, New York 10013

Law Office of Harvey S. Mars LLC
322 West 48th Street
New York, New York 10036

Community and Social Agency Employees' Union, District Council 1707
Attn: Mike Green, Director of Organizing
101 Avenue of the Americas
New York, New York 10013


MARC S. BRESKY

Sworn to before me this
9th day of February, 2011


Notary Public

MARY ELLEN O'BRIEN
Notary Public, State of New York
No. 01OB4756523
Qualified in Queens County
Certificate Filed in New York County
Commission Expires September 30, 2010